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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

Mohamed Abdelal,

Plaintiff,

-against-

Commissioner Raymond W. Kelly; City of New York

Defendants.

--x

ORDER

13-cv-04341 (ALC)

ANDREW L. CARTER, JR., United States District Judge:

Plaintiff Mohamed Abdelal ("Plaintiff"), a former police officer at the New York City Police Department ("NYPD" or the "Department"), filed suit on June 21, 2013, claiming that Police Commissioner Raymond Kelly and the City of New York ("City") discriminated against him and subjected him to a hostile work environment because of his Egyptian national origin, Arab ancestry, and/or his Muslim religion. Plaintiff asserts claims under 42 U.S.C. § 1981 ("§ 1981"), 42 U.S.C. §§ 2000 et seq., ("Title VII"), the New York State Human Rights Law, ("NYSHRL") and the New York City Human Rights Law ("NYCHRL"). In January 2013, Plaintiff was terminated after a departmental trial where he was adjudicated guilty of nine charges of misconduct all occurring within his first three years of becoming a police officer. On July 6, 2016, Defendants moved for summary judgment on the grounds that Plaintiff's claims are deficient as a matter of law. For the reasons set forth below, Defendants' motion is granted.

I. BACKGROUND

Unless stated otherwise, the following facts are drawn from the parties' Rule 56.1 statements and construed in a light most favorable to the non-moving party, Plaintiff.

Plaintiff was born in Cairo, Egypt and self-identifies as Muslim. See Amended Complaint, ¶ 20; Defendants' Rule 56.1 Statement ("Dfdt.'s R. 56.1 Statement"), at ¶ 3. In January 2007, Plaintiff was assigned to the 50th Precinct. Id., at ¶ 4. Plaintiff claims he was subjected to a prolonged investigation, excessively scrutinized, and subsequently terminated due to his Egyptian national origin, Arab ancestry, and/or his Muslim faith. Id., at ¶ 2. Defendants aver that there is no evidence that Plaintiff's treatment was in any way connected to his race, ethnicity, national origin or religion.

Defendants contend that the undisputed material facts demonstrate that Plaintiff's employment was terminated because he repeatedly engaged in misconduct resulting in several disciplinary charges that were adjudicated and substantiated after a disciplinary trial. Defendants also note that Plaintiff pleaded guilty to many of the charges in question. The facts relevant to Defendant's summary judgment unfolded according to the following timeline.

On September 22, 2007 Plaintiff failed to properly search a prisoner under his supervision as required by Patrol Guide Section 210-01 and failed to properly maintain a prisoner roster as required by Patrol Guide Section 244-145. While under Plaintiff's supervision, the prisoner attempted to commit suicide with a shoelace. Id., at ¶ 26.

On March 30, 2008, Plaintiff visited the Hudson County Correctional Facility while he was off-duty because he believed that an inmate detained there, Eslam Gadou, had stolen money from Plaintiff's friends. Dfdt.'s R. 56.1 Statement, at ¶¶ 9, 11. Plaintiff failed to advise his command that he was going to visit the correctional facility. Id., at ¶ 10. Even though Plaintiff was off-duty, he identified himself to Hudson County Correctional Sergeant Michael Prins as an NYPD officer of the 50th Precinct and displayed his NYPD identification. Dfdt.'s R. 56.1 Statement, at ¶ 11. Plaintiff told Prins that he believed Gadou had embezzled money from Egyptian nationals. Id., at ¶ 12. Plaintiff was denied access to Gadou and left the facility. Id., at ¶ 13.

After Plaintiff left the facility, Prins called the NYPD Internal Affairs Bureau ("IAB") and reported that Plaintiff had sought to interview Gadou as part of an investigation Plaintiff said he was conducting with INTERPOL. Id., at ¶ 14. Based upon this report, IAB began an investigation under Case Number C08-0325 into Plaintiff's visit to the correctional facility. On March 30, 2008, investigators from IAB interviewed Prins, who stated that Plaintiff purported to be conducting a criminal investigation with INTERPOL, but then later admitted that he was there on a personal matter. Id., at ¶¶ 15-16.

Between July 15, 2008 and July 19, 2008, Plaintiff went on sick leave. Patrol Guide 205-01 requires home confinement during sick leave, unless the officer reporting sick has permission or authority from the Department to leave his residence or county of residence while on sick leave. The Department checks police officers' residences to confirm that they are complying with home confinement. Declaration of Kristen McIntosh in Support of Defendants' Motion for Summary Judgment ("McIntosh Decl.", Ex. F (Patrol Guide 205-01). During his sick leave, he traveled to Las

Vegas, Nevada to take the Honolulu Police Department Exam. Plaintiff did not have permission or authority from the NYPD to leave his residence or county of residence while on sick leave. Dfdt.'s R. 56.1 Statement, at ¶¶ 29-31. While investigating Plaintiff's whereabouts during his sick leave, the NYPD discovered that Plaintiff had moved to New Jersey without notifying his commanding officer. His doing so violated Patrol Guide 203-18, which requires NYPD officers to reside within any of the five boroughs or the counties of Westchester, Rockland, Orange, Putnam, Nassau, or Suffolk. NYPD officers are also required to notify their commanding officers of changes in residence by submitting a change of residence form. McIntosh Decl., Ex. F (Patrol Guide 203-18).

On September 5, 2008, the NYPD Advocate's Office ("DAO") filed charges and specifications against Plaintiff under Disciplinary Case No. 2008-254 for violating the NYPD Patrol Guide sections on proper prisoner procedure. Id., at ¶ 27.

On May 20, 2009, as part of the investigation into Plaintiff's unauthorized visit to the correctional facility, IAB investigators interviewed Plaintiff pursuant to NYPD Patrol Guide Sections 206-13 and 203-08. The interview, known as a GO-15, was the first time Plaintiff learned that he was being investigated by IAB. Id., at ¶¶ 18-19. During the interview, Plaintiff admitted that between January 1, 2009 and May 20, 2009, he had been working for Channel 13 as a freelance producer without obtaining the requisite off-duty employment approval. Id., at ¶ 20.

As a result of the investigation into Plaintiff's unauthorized visit to the correctional facility, the NYPD Advocate's Office ("DAO") filed charges and specifications against Plaintiff on August 17, 2009 under Disciplinary Case No. 2009-320 for violating NYPD Patrol Guide Sections 203-10 (prohibited public contact) and 205-40 (unapproved off-duty employment) and Interim Order No. 11 (failure to notify a commanding officer when visiting a correctional institution). The charges filed on August 17, 2009 under Disciplinary Case No. 2009-320 alleged:

- **Specification 1**: Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, while off-duty, on or about March 30, 2008, did fail to notify his Commanding Officer when attempting to visit an inmate in Hudson County Correctional Facility, as required.
- **Specification 2**: Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, while off-duty, on or about March 30, 2008 did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer did provide false or misleading information to Immigration and Naturalization Services Officer(s), in that said Police Officer did represent to said Officer(s) that he needed to interview an inmate as a part of an Official Investigation involving INTERPOL, when said Police Officer was not involved in any such investigation.

- **Specification 3**: Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, on or about and between January 1, 2009 and May 20, 2009, was engaged in offduty employment without obtaining an approved off duty employment application, as required.

Dfdt.'s R. 56.1 Statement, at ¶¶ 21-22.

On September 3, 2009, the DAO filed charges and specifications against Plaintiff under Disciplinary Case No. 2009-436 for violating NYPD Patrol Guide 205-01 and 203-18, alleging.

- **Specification 1**: Said Police Officer, Mohamed Abdelal, while assigned to the 50th precinct, while on sick report, on or about and between July 15, 2008 and July 19, 2008, was wrongfully, and without just cause, absent from his residence beyond his authorized pass hours without permission or authority of said officer's District Surgeon and/or the Medical Division Sick Desk Supervisor.
- **Specification 2**: Said Police Officer, Mohamed Abdelal, while assigned to the 50th precinct, while on sick report, on or about and between July 15, 2008 and July 19, 2008, while on sick report, did leave the confines of the City or resident counties without the approval of the Chief of Personnel.
- **Specification 3**: Said Police Officer, Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report/ on or about and between June 2008 to March 10, 2009, did fail to reside within the confines of the City or residence counties, as required.
- **Specification 4**: Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between June 2008 to March 10, 2009, did wrongfully cause false entries to be made in department records and that said police officer did in fact, reside in New Jersey.

Dfdt.'s R. 56.1 Statement, at ¶¶ 33-34.

The IAB investigation into Plaintiff's unauthorized visit to the correctional facility concluded on September 30, 2009. Id., at ¶ 23. While Plaintiff was under IAB investigation he was neither suspended nor placed on modified duty. Id., at ¶ 24. As a result of the investigation, on October 9, 2009, Plaintiff was placed on Level II Disciplinary Monitoring. Id., at ¶ 35; see McIntosh Decl., Ex. J (Notification of Placement into Level II Disciplinary Monitoring) ("Lvl. II Notification").

On July 2010, IAB conducted an integrity test on Plaintiff due to Plaintiff's Level II Disciplinary Monitoring status, which Plaintiff passed. Id., at ¶ 36. On February 8, 2011, IAB conducted another targeted integrity test due to Plaintiff's Level II Disciplinary Monitoring status. As a result of the integrity test, IAB determined that Plaintiff failed to prepare a Stop, Question and Frisk Report worksheet and failed to make the appropriate entry in his activity log, both of which are required by Department procedure. Id., at ¶¶ 37-38. As a result of Plaintiff's failures during the integrity test, the DAO filed charges and specifications against Plaintiff on November 1, 2011 under Disciplinary Case No. 2011-5996 for violating NYPD Patrol Guide 212-11, alleging:

- **Specification 1**: Said Police Officer Mohamed Abdelal, assigned to the 50th precinct, on or about February 8, 2011, within the confines of the 50th Precinct, in Bronx County, said officer did fail and neglect to perform said officer's duties, to wit said officer failed to prepare a UF-250 following a stop and question of a male known to this Department, as directed by competent authority.
- **Specification 2**: Said Police Officer Mohamed Abdelal, assigned as indicated in Specification #1, on or about February 8, 2011, within the confines of the 50th Precinct, in Bronx County, did fail and neglect to maintain said officer's Activity Log (PD 112-145), to wit said officer failed to make entries relating to a stop and question of a male known to this Department.

Dfdt.'s R. 56.1 Statement, at ¶¶ 39-40.

Given the number of charges and specifications pending against Plaintiff, the DAO negotiated a pre-trial plea with Plaintiff of a 60-day suspension and one-year of dismissal probation. First Deputy Police Commissioner Rafael Pineiro disapproved the plea negotiation on the grounds that "there were issues of integrity, honesty, trustworthiness and competence involved which . . . warranted a different penalty," and instead recommended a pre-trial plea of the forfeiture of 30 vacation days, a 30-day suspension, one-year of dismissal probation, and that Plaintiff file for a vested-interest retirement from the NYPD upon completion of his suspension. Former Commissioner Kelly approved Pineiro's recommendation and directed that the plea be renegotiated under the terms Pineiro recommended. Plaintiff rejected the plea offer and chose to go to trial. Id., at ¶¶ 41-44.

After a five-day trial, Deputy Commissioner of Trials Martin G. Karopkin submitted a report and recommendation to former Commissioner Kelly in which he found Plaintiff guilty of failing to properly search a prisoner as alleged in Specification 1 of Disciplinary Case No. 2008-254. Plaintiff pleaded guilty to failing to properly maintain a prisoner roster as alleged in Specification 2 under Disciplinary Case No. 2008-254. He also pleaded guilty to failing to notify his Commanding Officer when attempting to visit an inmate at Hudson County Correctional Facility as alleged in Specification 1 under Disciplinary Case No. 2009-320. Karopkin found Plaintiff guilty of providing false or misleading information to Immigration and Naturalization Services Officers by purporting to be involved in an INTERPOL investigation, as alleged in Specification 2 of Disciplinary Case No. 2009-320. Notably, prior to rejecting former Commissioner Kelly's pre-trial plea deal, Plaintiff had pleaded guilty to providing false or misleading information to Immigration and Naturalization Services Officers by purporting to be involved in an INTERPOL investigation, as alleged in the same specification of Disciplinary Case No. 2009-320. During the trial, Plaintiff pleaded guilty to engaging in off-duty employment without obtaining the requisite approval as alleged in Specification 3 under Disciplinary Case No. 2009-320. He also pleaded guilty to all of the Specifications under Disciplinary Case No. 2009-436 involving his unauthorized trip to Las Vegas when he was on sick leave and his failure to comply with the NYPD residency requirements. Finally, Karopkin dismissed Specifications 1 and 2 under Disciplinary Case No. 2011-5996 involving Plaintiff's failed integrity test. After reviewing all of the evidence, Karopkin issued a recommendation of a one-year dismissal probation and the forfeiture of 45 vacation days. Id., at ¶¶ 45-55; see McIntosh Decl., Ex. Q (Report and Recommendation).

The Police Commissioner's Office Committee ("PCO"), the body responsible for reviewing disciplinary matters and making recommendations to the police commissioner recommended that Plaintiff be offered a negotiated penalty of the forfeiture of 30 vacation days, a 30-day suspension, one-year dismissal probation, waiver of all time and leave balances, and that Plaintiff file for a vested-interest retirement from the NYPD while under suspension. Id., at ¶¶ 56-57. Upon review, former Commissioner Kelly approved Karopkin's findings but rejected his recommended penalty, agreeing with the penalty proposed by the PCO instead. Former Commissioner Kelly offered the PCO's proposed penalty to Plaintiff, but Plaintiff refused the agreement and was terminated from the NYPD on January 29, 2013. Id., at ¶¶ 58-61.

In March of 2013, Plaintiff filed a charge with the EEOC. On March 26, 2013, the EEOC issued a Notice of Right to Sue. Amend. Compl. at ¶¶ 134-135. In May 2013, Plaintiff commenced a proceeding pursuant to New York Civil Practice Laws and Rules ("CPLR") Article 78 challenging his termination on the grounds that the NYPD discriminated against him based on his national origin. On June 16, 2014, Plaintiff's Article 78 proceeding was transferred to the Appellate Division, First Department to decide whether Plaintiff's termination was supported by substantial evidence. Id., at ¶¶ 72-73.

Plaintiff reiterated his claim of discrimination in his brief to the First Department by stating, "Petitioner-Appellant Abdelal was terminated not because his misconduct warranted dismissal, but because of his Egyptian national origin. If racially motivated termination is not shocking to one's sense of fairness, it is unclear what is." Id., at ¶ 74; see McIntosh Decl., Ex. AA (Appellate Brief) at pp. 30, n.6; 38.

On March 17, 2016, the First Department upheld Plaintiff's termination and dismissed Plaintiff's Article 78 Petition, holding "The hearing testimony from Hudson County, New Jersey correctional employees constitutes substantial evidence to support the finding that petitioner engaged in conduct prejudicial to the good order, efficiency and discipline of the NYPD . . .The penalty imposed does not shock our sense of fairness." Id., at ¶ 75; see Matter of Abdelal v. Kelly, 137 A.D.3d 581 (1st Dep't 2016).

While the Article 78 proceeding was pending, Plaintiff filed suit before this court. The operative complaint (the "Amended Complaint") asserts claims under § 1981, Title VII, the New York State Human Rights Law, and the NYCHRL. Specifically, Plaintiff is suing for:

1. disparate treatment in violation of Section 1981 based on ancestry and/or national origin discrimination;
2. unlawful harassment in violation of Section 1981 based on ancestry and/or national origin discrimination;
3. disparate treatment in violation of Title VII based on ancestry and/or national origin discrimination;
4. unlawful harassment in violation of Title VII based on ancestry and/or national origin discrimination;
5. disparate treatment in violation of Title VII based on religious discrimination;
6. unlawful harassment in violation of Title VII based on religious discrimination;
7. disparate treatment in violation of the NYSHRL based on ancestry and/or national origin discrimination;
8. unlawful harassment in violation of NYSHRL based on ancestry and/or national origin discrimination;
9. disparate treatment in violation of the NYSHRL based on religious discrimination;
10. unlawful harassment in violation of NYSHRL based on religious discrimination;
11. disparate treatment in violation of the NYCHRL based on ancestry and/or national origin discrimination;
12. unlawful harassment in violation of NYCHRL based on ancestry and/or national origin discrimination;
13. disparate treatment in violation of the NYCHRL based on religious discrimination;
14. unlawful harassment in violation of NYCHRL based on religious discrimination;

Amend. Compl. at ¶¶ 110-268. Plaintiff seeks a declaratory judgment that the acts and practices of Defendants were in violation of Title VII, Section 1981, the NYSHRL, and the NYCHRL. He also seeks injunctive relief in the form of reinstatement to the NYPD, as well as an award against Defendants for lost wages and benefits, including but not limited to, an award of back pay, front pay, overtime pay, benefits, earnings, privileges and interest lost as a result of said unlawful discrimination and unlawful harassment as provided for in Section 1981, Title VII, the NYSHRL, and the NYCHRL. Additionally, Plaintiff requests consequential damages, compensatory damages, punitive damages, attorney fees, and costs. Amend. Compl. at 39-40.

On October 28, 2014, Defendants moved to dismiss the Amended Complaint. ECF No. 41. On December 23, 2014, the Court denied Defendants' motion. ECF No. 48. The Court subsequently ordered discovery, during which Plaintiff and a number of other witnesses were deposed.

During his deposition, Plaintiff testified that from the time he learned of the IAB investigation until the time he was terminated, his work responsibilities, command structure, and relationships with his supervisors remained the same as before. Id., at ¶ 25. He further testified that he had no specific knowledge of any programs initiated by former Commissioner Kelly to conduct surveillance on Muslim communities and was unable to articulate any knowledge of any programs initiated by former Commissioner Kelly to conduct surveillance on Muslim communities beyond what he had learned from reading and watching the news. Additionally, he stated that learning of any programs initiated by former Commissioner Kelly to conduct surveillance on Muslim communities had no effect on his employment. Dfdt.'s R. 56.1 Statement, at ¶¶ 6-8 (citing Exhibit ("Ex.") A, (Plaintiff's September 15, 2015 Deposition) ("Pltf's Dep.") at 94:5-95:18. Plaintiff testified that he did not believe Karopkin's findings of guilt were discriminatory and that he did not have any reason to believe that Karopkin was prejudiced against people of Egyptian descent or of Muslim faith. Id., at ¶¶54. See Ex. A (Pltf's Dep.) at 62:8-13, 17-23, 63:1.

Other than the investigation into Plaintiff's misconduct and his subsequent termination, the only additional allegation of discrimination Plaintiff articulated at his deposition involved the denial of leave for a religious holiday, Eid, while he was assigned to the 50th Precinct. Dfdt.'s R. 56.1 Statement, at ¶¶ 68-70; see McIntosh Decl., Ex. A (Pltf's Dep.) at 37-42, 43:1-3. However, Plaintiff was unable to identify in what year he made this request. Dfdt.'s R. 56.1 Statement, at ¶ 70; see McIntosh Decl., Ex. A (Pltf's Dep.) at 37:6-8; 38:7-9. He further testified that his request was denied because he made the request at the last minute, the day before the holiday fell. Dfdt.'s R. 56.1 Statement, at ¶ 71; see McIntosh Decl., Ex. A (Pltf's Dep.) at 40: 6-8, 19-21.

For his part, former Commissioner Kelly testified that at the time he made the decision to dismiss Plaintiff from the NYPD, he believed the "series of infractions within a three-year period from when [Plaintiff] was hired to when these proceedings began showed a lack of judgment and lack of maturity that is needed by police officers to conduct their job." McIntosh Decl., Ex. O (Kelly Dep.) at 116:3-12.

After discovery, Defendants moved for summary judgment. ECF No. 110. Specifically, Defendants contend that Plaintiff's claims are deficient as a matter of law because his claim that he was terminated due to discrimination is issue precluded by the prior Article 78 proceeding. In the alternative, Defendant argue that Plaintiff cannot demonstrate a *prima facie* case of discrimination under Section 1981, Title VII, the NYSHRL and/or the NYCHRL as there is no evidence that his treatment by Defendants was in any way connected to his ancestry, national origin, or religion. Instead, the undisputed material facts demonstrate that Plaintiff's employment was terminated because he repeatedly engaged in misconduct resulting in several disciplinary charges that were adjudicated and substantiated after a full disciplinary trial.

Defendants further assert that Plaintiff's hostile work environment claims are similarly deficient because: (a) his claims under Title VII, the NYSHRL and the NYCHRL are time-barred; and (b) none of the matters of which Plaintiff complains support a hostile work environment claim. Finally, Defendants argue that Plaintiff may not maintain Title VII claims against former Commissioner Kelly, because Title VII does not provide for individual liability. Nor can Plaintiff maintain his Section 1981 claims against the City because Plaintiff has failed to establish that his rights were violated as a result of a municipal policy or practice.

II. LEGAL STANDARD

Summary judgment may not be granted unless the submissions of the parties taken together "show[ ] that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party bears the burden of demonstrating the absence of a material fact question, and in making this determination the court must view all facts in the light most favorable to the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986); Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The opposing party must "set forth specific facts showing that there is a genuine issue for trial," and cannot rest on mere "allegations or denial" of the movant's pleadings. Fed.R.Civ.P. 56(c); Hicks v. Baines, 593 F.3d 159, 166 (2d Cir. 2010). "[C]onclusory statements, conjecture, and inadmissible evidence are insufficient to defeat summary judgment." Ridinger v. Dow Jones & Co. Inc., 651 F.3d 309, 317 (2d Cir. 2011) (citation omitted).

In cases involving claims of employment discrimination "an extra measure of caution is merited" in granting summary judgment because "direct evidence of discriminatory intent is rare and such intent often must be inferred from circumstantial evidence found in affidavits and depositions." Schiano v. Quality Payroll Sys., Inc., 445 F.3d 597, 603 (2d Cir. 2006) (citation omitted). Nonetheless, "a plaintiff must provide more than conclusory allegations to resist a motion for summary judgment." Holcomb v. Iona College, 521 F.3d 130, 137 (2d Cir. 2008). Ultimately, the test for summary judgment "is whether the evidence can reasonably support a verdict in plaintiff's favor." James v. N.Y. Racing Ass'n, 233 F.3d 149, 157 (2d Cir. 2000).

III. DISCUSSION

A. Plaintiff's Claims of Disparate Treatment Based on His Termination Are Barred By Collateral Estoppel

Defendants assert that Plaintiff's claims of disparate treatment based on his termination are barred by res judicata. The Court agrees.

It is well-settled that federal district courts lack jurisdiction over any claim that "directly challenges, or is 'inextricably intertwined' with, a prior state court decision." Karamoko v. New York City Housing Auth., 170 F.Supp.2d 372, 376 (S.D.N.Y. 2001) (internal quotations and internal citation omitted). In this circuit, where "the precise claims raised in a state court proceeding are raised in the subsequent federal proceeding," the action is barred; on the other hand, "where the claims were never presented in the state court proceedings and the plaintiff did not have an opportunity to present the claims in those proceedings, the claims are not 'inextricably intertwined' and therefore not barred." Moccio, 95 F.3d at 198–99. When a plaintiff had an opportunity to raise a claim in an earlier proceeding, but failed to do so, the plaintiff's claim is precluded. Id. at 199–200.

Federal district courts are obligated to give the same issue preclusive effect to the Article 78 proceedings as would be given by the courts of New York. See Richardson v. City of N.Y., 2004 WL 169750, at *1 (S.D.N.Y. Jan. 28, 2004). Issue preclusion "prevents a party from re-litigating an issue of fact or law that has been decided in an earlier suit." Wilder v. Thomas, 854 F.2d 605, 616 (2d Cir. 1988). Issue preclusion operates to bar claims where the issue in question was actually and necessarily decided in a prior proceeding, and the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the first proceeding. Colon v. Coughlin, 58 F.3d 865, 869 (2d Cir. 1995). While the party asserting collateral estoppel has the burden of showing that the identical issue was previously decided, the party resisting preclusion bears the burden of demonstrating that he was denied a full and fair opportunity to litigate the issue in the prior proceeding. Id.

Where a petitioner brings an Article 78 proceeding challenging a termination on the ground that it was discriminatory and the New York state court finds that the termination was supported by substantial evidence, the state court's decision necessarily implies a rejection of the claim that the termination was discriminatory. See Richardson v. City of N.Y., 2004 WL 169750, at *1 (S.D.N.Y. Jan. 28, 2004) (granting summary judgment on collateral estoppel grounds where Article 78 petition alleging discrimination was denied on the basis of substantial evidence); Latino Officers Ass'n of the City of New York, Inc. v. City of New York, 253 F. Supp. 2d 771, 787 (S.D.N.Y. 2003) (granting summary judgment on collateral estoppel grounds where Article 78 proceeding was denied on the basis of substantial evidence); see also Batyreva v. N.Y. City Dep't of Educ., 2008 WL 4344583, at *10 (S.D.N.Y. Sept. 18, 2008) (dismissing discrimination and retaliation claims previously raised in Article 78 proceeding because "[i]n order for the court to conclude that there was a rational basis for the unsatisfactory ratings, it had to reject Plaintiff's claim that the ratings were discriminatory and retaliatory"). Therefore, a plaintiff is precluded from litigating the same discrimination claims in a subsequent federal action. See Richardson, 2004 WL 169750, at *1.

Here, in the Article 78 proceeding, Plaintiff brought suit asserting that his termination was arbitrary and capricious and an abuse of discretion. McIntosh Decl., Ex. X (Article 78 Petition); Ex. Y (Amended Article 78 Petition and Notice of Claim). Plaintiff's Notice of Claim states that the nature of his claim is "for discrimination, violation of due process, civil rights violations, los[t] wages, . . . and all other claims allowed by statute and case law as a result of the wrongdoing, intentional act, gross negligence, negligence, deliberate indifference, carelessness, [and] malicious prosecution. McIntosh Decl., Ex. Y. Plaintiff alleged that his termination was "due to [his] nationality." McIntosh Decl., Ex. X (Article 78 Petition), at ¶10. Plaintiff reiterated his claim of discrimination in his brief to the First Department by stating, "Petitioner-Appellant Abdelal was terminated not because his misconduct warranted dismissal, but because of his Egyptian national origin. If racially motivated termination is not shocking to one's sense of fairness, it is unclear what is." See Dfdt.'s R. 56.1 Statement, at ¶ 74; McIntosh Decl., Ex. AA (Appellate Brief) at 38. The First Department dismissed Plaintiff's Article 78 Petition, holding that "[t]he hearing testimony from Hudson County, New Jersey correctional employees constitutes substantial evidence to support the finding that petitioner engaged in conduct prejudicial to the good order, efficiency and discipline of the NYPD . . . The penalty imposed does not shock our sense of fairness." Matter of Abdelal v. Kelly, 137 A.D.3d 581, 582 (1st Dep't 2016) (internal citations omitted).

Plaintiff's suit before this court is to "redress discrimination based on race, religion and national origin, unlawful harassment, unlawful retaliation, an unlawful employment practices" under Title VII, Section 1981, the NYSHRL, and the NYCHRL for his treatment and termination. ECF No. 1. Plaintiff avers that the Article 78 proceeding did not deal with his claims for discrimination based on race and religion. Plaintiff's argument is misguided. When a plaintiff has an opportunity to raise an "inextricably twined" claim in an earlier proceeding, but fails to do so, the plaintiff's claim is precluded. Moccio, 95 F.3d at 199–200. Here, the facts and circumstances underlying Plaintiff's claims for disparate treatment based on race and religion are inextricably twined with his claims for discrimination based on national origin. Plaintiff could have properly raised *all* of these claims before the Article 78 court, but chose not to. As noted above, Article 78 decisions are entitled to preclusive effect. Therefore, all of Plaintiff's disparate treatment claims must be dismissed.

B. Plaintiff's Hostile Work Environment Claims are Untimely

In support of his claim that Defendants created a hostile work environment, Plaintiff asserts that he was subjected to a "full-scale investigation into [his] personal and professional life." Amend. Compl. at ¶¶ 49-64. In order to establish a hostile work environment claim, a plaintiff must show that "the workplace is permeated with discriminatory intimidation, ridicule, and insult that . . . 'alter[s] the conditions of [his] employment and create[s] an abusive working environment.'" Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993). Additionally, a plaintiff must allege that the hostile work environment was caused because of a protected characteristic. See Brown v. Henderson, 257 F.3d 246, 252 (2d Cir. 2001). Under Section 1983, the NYSHRL, and the NYCHRL, a court determining whether a work environment is abusive or hostile must examine the totality of the circumstances, including "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Kaytor v. Elec. Boat Corp., 609 F.3d 537, 547 (2d Cir. 2010); Patterson v. Cnty. of Oneida, 375 F.3d 206, 225 (2d Cir. 2004); Tolbert v. Smith, 790 F.3d 427, 439 (2d Cir. 2015).

In order to bring a timely Title VII claim for hostile work environment, a plaintiff must file with the U.S. Equal Employment Opportunity Commission ("EEOC") within 300 days of the claimed unlawful act. Hogan v. J.P. Morgan Chase Bank, 402 Fed. App'x. 590, 592 (2d Cir. 2010); Petrosino v. Bell Atlantic, 385 F.3d 210, 219 (2d Cir. 2004). Under the NYSHRL and NYCHRL, a claim for hostile work environment is subject to a three-year statute of limitations. See Bermudez v. City of N.Y., 783 F. Supp. 2d 560, 573 (S.D.N.Y. 2011).

Here, the basis of Plaintiff's hostile work environment claim is his investigation by IAB. At his deposition, Plaintiff testified that he learned of the IAB investigation when he was interviewed by the IAB in regards to the incident at Hudson County Correctional Facility on May 20, 2009. See Dfdt.'s R. 56.1 Statement at ¶ 18; McIntosh Decl., Ex. A (Pltf's Dep.) at 79:9-25. The investigation concluded on September 30, 2009. See Dfdt.'s R. 56.1 Statement, ¶ 23; McIntosh Decl., Ex. B (Case Report).

Plaintiff filed the EEOC charge in March 2013, more than 300 days from the last incidence of the claimed unlawful act. Therefore, his claim for hostile work environment pursuant to Title VII is untimely. Plaintiff filed the instant action on June 23, 2013. Accordingly, his claims of hostile work environment pursuant to the NYSHRL and the NYCHRLS are time-barred. Thus, Plaintiff's hostile work environment claims must be dismissed.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment is GRANTED. Plaintiff's claims are dismissed. ECF No. 110. The Clerk of Court is directed to terminate all pending motions, adjourn all remaining dates, and close the case.

SO ORDERED.
Dated: April 3, 2017
New York, New York

ANDREW L. CARTER, JR.
United States District Judge